

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

| | | |
|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | No. 10-05044-01-CR-SW-RED |
| |) | |
| JASON HILL, |) | |
| |) | |
| Defendant. |) | |

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Defendant has filed a Motion to Dismiss, arguing that because possession of child pornography is a lesser included offense of receipt of child pornography, that a count of the indictment must be dismissed as it violates the defendant's rights against double jeopardy. The United States has filed a response.

Assuming that the facts adduced at trial are as the government states in its response, the possession and receipt in this case are on different days and involve different files. Double jeopardy would not therefore be implicated. For the above reasons, it is hereby

RECOMMENDED that the defendant's Motion to Dismiss be denied without prejudice to his right to reassert it should the facts adduced at trial so warrant.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate Judge

Date: July 13, 2012